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On Behalf of the Association of Oil Pipe Lines and
The American Petroleum Institute
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Introduction

Mr. Chairman, members of the Committee, my name is Phillip D. Wright. I am Senior Vice President of Williams Energy Services for Enterprise Development and Planning. Williams Energy Services owns and operates around 22,500 miles of pipelines carrying crude oil, liquid propane gas and refined petroleum products, including jet fuel, diesel fuel, heating oil and kerosene. Our pipelines are spread through 17 states, primarily in the West, Southwest, and Midwest. Williams is also a large operator of natural gas pipelines. Our company operates about 30,000 miles of interstate natural gas pipelines.

Currently I serve as Chairman of the Association of Oil Pipe Lines and appreciate this opportunity to appear before the Committee today on behalf of the Association and the American Petroleum Institute. The Association of Oil Pipe Lines (AOPL) is an unincorporated trade association representing 58 common carrier oil pipeline companies. AOPL members carry nearly 80% of the crude oil and refined petroleum products moved by pipeline in the United States. The American Petroleum Institute (API) represents over 400 companies involved in all aspects of the oil and natural gas industry, including exploration, production, transportation, refining and marketing. Together, these two organizations represent the vast majority of the U.S. pipeline transporters of petroleum products.

The Liquid Pipeline Industry

Mr. Chairman, the background information for my testimony is presented in the information packet included with my testimony. One of these packets was delivered to each Member of Congress earlier this week. I ask that this packet be made a part of the Record.

There are approximately 200,000 miles of oil and petroleum product pipelines in all 50 states of this country. The liquid pipeline infrastructure constitutes a fundamental part of our national economy. Pipelines carry about 66%of the petroleum and petroleum products moved domestically. About 29%is moved by water and about 5% by truck or rail.

Chances are, the gasoline you put in your car gets to you, in part, by pipeline. Our nation's airports rely on pipelines to deliver the jet fuel that powers our aviation industry. The trucking system relies on diesel fuel delivered by pipeline. Millions of heating oil and propane customers rely on pipeline deliveries. And industries across America rely on pipelines to deliver the feedstock they use to make many of our household goods.

Pipelines are an extremely efficient transportation system. For example, Williams' petroleum product lines moved roughly 591million barrels of product through our system last year. That is the equivalent of about 8,000 truck tanker loads every day. Gasoline may cost $1.50 a gallon, but the pipeline transportation contribution to the cost is around two cents.

As an industry, pipelines depend on a relatively small national workforce to approximately 16,000 skilled men and women. That modest workforce, however, and the 200,000 miles of pipelines for which they are responsible, transport over 600 billion ton-miles of freight each year. This mammoth job is accomplished so efficiently that

America's oil pipelines transport 17% of all U.S. freight, but represent only 2% of the nation's entire freight bill.

The Industry's Safety Record

The liquid pipeline industry has a good safety record, a record that we in the industry are striving constantly to improve. On average, over the last ten years, liquid pipeline accidents have caused about two deaths per year and 10-15 injuries. In three of the last ten years, there have been no fatalities, and that is goal for which we strive. Pipeline transportation of fuel is far and away the safest form of transportation. For example, on a per gallon basis, deaths are 87 times more likely to occur when transportation is by truck rather than by pipeline. Many industries would be envious of our safety record.

Having said that, we have a slogan in our company that "Good enough never is" and that applies here. A tragic accident like the recent one in Bellingham, Washington reminds us that any accident involving injuries or death is unacceptable and it's our desire and intention to improve on the current accident record.

The same is true with regard to leaks from the pipeline system. The last several years have seen, on average, about 160 reported leaks per year and involved the loss of about 160,000 barrels of product. This represents about one-thousandth of one percent of the total product. Still, a spill of any significant size can create serious problems if it occurs in an environmentally sensitive area. The recent spill here in the Washington, D.C. area demonstrates that.

It is important for the Committee to understand that the desire to operate safely does not result from OPS regulations, the threat of fines, or the threat of lawsuits. The desire to operate safely is woven into our corporate decision-making and into the industry-driven initiatives undertaken by our trade organizations. We assume responsibility for operating our lines safely. We care about the safety of our employees. We care about the safety of the public who lives near our lines. We care about preserving the environment. It is the right thing to do.

It is also in our financial interest to operate a safe, accident free system. Consider the practical fact that accidents have unacceptable business consequences. Accidents disrupt service to our customers and limit our ability to utilize our systems for an indefinite period of time. Cleanup and mitigation costs are expensive. Litigation costs can be substantial. Increasingly, our employees face the possibility that criminal charges may be brought. Accidents cause the public and government officials to question our commitment to safety and our credibility. Some critics have suggested that our companies have no financial reason to maintain high safety standards. We would suggest that exactly the opposite is true. The cost of having an accident, especially one involving deaths or injuries, is financially unacceptable to us and our stockholders.

These real incentives have led to a renewed focus on safety. And our efforts to improve safety have shown results. Real trends in safety performance take a long time to see. As the chart here demonstrates, over the last 30 years, our safety performance has improved steadily, whether measured in the number of incidents or the volume released. The number of pipeline incidents has decreased by 40% and the volume released has gone down 60%. These improvements have occurred at the same time that the total volumes transported have increased. Between 1977 and 1997, the amount of oil and petroleum products transported by pipeline increased almost 13%.

Having said this, we understand and accept the fact that the public expects the government to oversee the industry's safety efforts. The public understandably wants to be assured that we are making every reasonable effort to insure safety. We have worked with the Office of Pipeline Safety over the years on any number of initiatives to improve the safety of the liquid pipeline industry. Issues involving electric resistance weld pipe, valve spacing, criteria for determining environmentally sensitive areas, and establishing an operator qualification program are just a few of the areas where the industry has worked with OPS to the benefit of the public and to safety.

The Proposed Legislation

With this background, let me now turn to a discussion of the proposals before the Committee to reauthorize and amend the Pipeline Safety Act. There are a number of minor technical suggestions we have and will be communicating to Committee staff but let me focus in this testimony on our substantive comments and concerns.

Integrity Testing

Both S. 2438, introduced by the Chairman, and the Administration bill, S. 2409, direct the OPS to develop pipeline integrity programs that apply more stringent standards in "high consequence areas", generally thought of as more densely populated and unusually environmentally sensitive areas, as well as commercially navigable waters. OPS is already undertaking this effort, issuing the proposed rule for liquid lines a few weeks ago. S. 2004 introduced by Senator Murray would prescribe mandatory internal inspection of all pipelines at least once every five years and periodic external inspection once such technology is developed.

We recommend the language in the McCain bill to that of the Administration bill for several reasons. The McCain bill provides guidance to OPS to develop an integrity program, whereas the Administration bill is far more prescriptive and detailed, which is suitable for regulatory development but not for legislation. The most troubling feature of the Administration language is the requirement that an integrity plan use the "best achievable technology." The term is undefined and will lead to great confusion and perhaps unintended consequences.

Safety does not result from using one test or one tool. Safety is achieved by using a variety of tools and operational techniques, some of which are low tech or do not involve technology at all. In some cases, the old fashioned technique of digging holes and visually inspecting the pipeline may be the most effective method of determining the condition of the pipe. Increased right-of-way patrolling and promoting one-call programs may be the most effective way to avoid third party damage in populated areas. In certain circumstances, a hydrostatic test may be the most effective and appropriate test, but this is distinctly a low-tech method. In sum, there is no question that technology is important, and we support increased research into new technology, but technology is not always the answer and it is a mistake to build that concept into the law.

Also, the use of this term almost assures constant controversy and probably litigation over its meaning. When different technologies measure different parameters, how can you say that one is the "best?" The prescriptive use of the term in the Administration's bill raises the question as to the point at which a company's integrity plan is out of compliance with the law because it does not include the latest wrinkle in technology. Taken to its most extreme, the term suggests that we should dig up all the pipe laid in the past because newer pipe is made using better technology. This is not realistic nor, we suspect, the intention of the Administration, but it is the sort of unintended consequence that will result if language like this in used in the statute.

While there are parts of the Administration's provision on integrity testing to which we would have no significant objection, it is simply not necessary to go into such detail. The proposed integrity rule for liquid pipelines has been issued using the authority under existing law, so clearly there is no lack of statutory authority to accomplish their objective.

S. 2004, introduced by Sen. Murray, does not call for an integrity program, but, as previously indicated, does mandate internal testing every five years. We believe that such a blanket requirement would waste safety resources and detract from the objective of focusing safety efforts on the areas of greatest need. Therefore we would oppose that proposal. This does not mean that we oppose periodic testing of our pipelines, merely that the type and timing of such testing should be determined through rulemaking.

Public Education/Community Right-To-Know

While structured somewhat differently, the bill of Chairman McCain and the Administration bill appear to contain substantially the same provisions in this area. Senator Murray's bill also requires increased dissemination of information to the public.

We in the liquid pipeline industry do not object to making more information about our operations available to the public. We do not, however, believe it is useful to simply blanket an area with technical information, when only a few people may be interested. We also want to understand exactly what is required, so there is not a dispute about what constitutes compliance with the requirement.

With that in mind, we would recommend modifying Section 5(a) of S. 2438 to direct the Secretary to issue standards prescribing the elements of an effective public education program. Also, the bill currently calls for companies to submit their plans to the Secretary. It has been our experience that OPS inspects these plans as part of their overall inspection of company compliance with the statute. We therefore suggest changing the language to say that plans shall be "made available" to the Secretary.

We also suggest that Committee Report language encourage OPS and the industry to explore and make greater use of electronic means of communications, such as the internet. We understand this is not a substitute for more traditional means of communications, but we should become more creative in how we approach this task than we have been in the past. We must also use new electronic tools to ensure that local public officials have access to the information they need when they need it, something that is not always easily accomplished with paper maps.

Enhanced State Oversight

Both the Administration bill and the bill offered by Chairman McCain contain provisions allowing for greater state involvement in the oversight of interstate pipelines. Senator Murray's bill allows for greater state regulation of operator training and for delegation of authority to states to enact more stringent regulations than those set by federal law. A principal imbedded in the Act since its creation is that federal rules should apply to pipeline facilities operating in interstate commerce while states should be allowed to regulate lines wholly with a given state's boundaries. We believe this guiding principal is critical if we are to have an efficient, safe pipeline network in this country. The industry simply cannot operate effectively if states can impose their own rules. Our systems cross state boundaries. Our operations and safety activities are planned and implemented on a system-wide basis. If we faced separate regulations in every state in which we operate, we believe the result would be a less efficient, less safe system overall and a potentially significant impediment to interstate commerce. Chairman McCain's statement accompanying the bill said it well

"A mishmash of state laws regarding the construction, maintenance, training and operation of pipelines would certainly hamper commerce and would likely not improve safety."

We could not agree more. We cannot support the delegation of authority to the state to enact pipeline safety laws that differ from federal law, as provided in S. 2004. Our concern is that S. 2004 and the language in the Administration and McCain legislation will lead to efforts by states to do just that. While carefully drafted in many respects, the McCain and Administration bills provide that a state, in the process of overseeing interstate lines as agents for OPS, can seek authority allowing it to engage in "other activities …that supplement the Secretary's program and address issues of local concern…." The use of this phrase, with no explanation of its meaning, raises serious questions. Are the states limited to applying the federal standards or are they able, with OPS's permission,

to establish their own requirements? For example, could a state decide that the definition of "high consequence area" established by OPS is too lax, and require a pipeline to treat the entire state as a "high consequence area?" Could the state create different public education/community right-to-know requirements? Could the state treat one company differently than another company? These are serious questions raised by the language in the bills and by other proposals being made. If nothing else, the legislative language will lead to confrontation and uncertainty.

Some have suggested that states be permitted to regulate, and to enact more stringent regulation of, an interstate line in lieu of the federal government if those states enter into a compact to regulate a line located between or among those states. This proposal raises serious questions in addition to those raised above. By the very nature of the compact, one or more interstate lines would be singled out for different treatment than other lines to the same area. Aside from the safety and coordination issues raised, this suggestion would appear to raise serious competitive concerns. Interstate pipelines serving the same markets would face different costs and different operating constraints. This is precisely why regulation of interstate commerce is left to the federal government.

OPS should be responsive to state concerns and we have no objection to creating a mechanism for states to bring concerns to the attention of OPS. However, we strongly recommend that the legislation clarify that in no event can states apply regulations to interstate lines that are different from the federal regulation.

It should be noted here that traditionally, the calls for greater state involvement in the regulatory process come in the wake of a specific accident. The Committee should keep in mind, however, that it is the federal government that has consistently taken the lead on pipeline safety. When the law was created, it set minimum standards for intrastate natural gas lines because not all states had effective programs for such regulation. Even today, many states do not regulate intrastate liquid pipelines, but rely on the federal government to do so. We would also note that in the case of natural gas, over 70% of the accidents involving injuries or deaths occur on lines under state jurisdiction. It is certainly fair to criticize OPS or the industry for not doing a better job, but the suggestion that the answer is to allow state regulation of interstate lines is simply not borne out by the evidence.

In addition to the role states have in intrastate pipeline regulation, states can improve safety results by establishing reasonable setback requirements for future development near pipeline rights-of-way and by requiring full participation (with no exemptions) in call-before-you-dig/one call systems.

Operator Qualification

The bill of Chairman McCain requires companies to submit training plans to the OPS within six months of enactment. The OPS has already issued a rule requiring operators to develop programs for assuring that operators are qualified to do their jobs and to document that program. We suggest that the language here, which talks about "training", be changed to read in terms of "qualification", which is a broader concept than training, and that the time for completing those programs be made to coincide with the operator qualification rule made effective October 26, 1999 (64 Federal Register 46853 of August 27, 1999). Again, rather than calling for submission of the plans to OPS, we suggest that they be "made available" to OPS.

The bill offered by Sen. Murray would require OPS to certify that all individuals involved in the operation and maintenance of pipelines have been tested and are qualified to perform their functions. OPS has examined this issue and, along with a wide range of stakeholders, including state safety officials and representatives of the public, has concluded that it makes no sense for OPS to perform a certification function. Under the standard developed, the industry must demonstrate that its covered employees and contractors are qualified to perform all tasks on the facility for which they are responsible. All of the documentation is subject to DOT review and audit and DOT can verify the implementation of the program.

Penalties

The Administration bill and that of Chairman McCain quadruple penalties for violations from $25,000 per violation to $100,000 and double the maximum civil penalty from $500,000 to $1,000,000. We are aware of no evidence

suggesting that the current penalty levels are too low, nor have we seen any analysis as to why the higher penalties proposed in the bills are appropriate. Before the Committee approves increases of this magnitude, we believe there should be some rationale articulated to justify the increase.

Shutdown Authority/Enforcement

Both the Administration bill and the bill of Sen. McCain contain language involving the Secretary's authority to shut down pipelines believed to be dangerous. OPS has the authority today to shutdown pipeline systems and exercises that authority when necessary. We are not sure why this additional authority is needed, but we do not object to the provision.

The Administration bill also proposed two changes to the provisions of the law involving civil actions taken by the Attorney General and the citizen suit provision of the law. We do not object to the changes made to Section 60120(a)(1) involving the civil action provisions.

The second provision, modifying the citizen suit authority in Sec. 60121, allows judges to levy fines, not just provide injunctive relief if it finds an operator in violation of the regulations. We believe this provision of the Administration bill will encourage additional lawsuits, not improve safety, and object to its adoption.

If the Committee does consider this provision, however, there are two changes that need to be made to the language. When the Secretary levies penalties under Section 60122, the dollar limits on fines discussed above apply. However, there are no such limits applied to cases decided by the Court under this language. It should be made clear that the same limits apply to judgements made under Section 60121 as apply under Section 60122. Also, when the Administrator levies a fine against a pipeline operator, the fine is paid to the federal government as provided in Section 60122. If judges are to be allowed to levy fines under Section 60121, then it should be made clear that those fines should also be paid to the government.

Section 4(c) of the Administration's bill proposes correcting a language flaw in Section 60123(d) of the Act. The language, as currently drafted, requires a contractor both to "knowingly and willfully" disregard the one-call notification system and to "knowingly and willfully" damage the pipeline. Intentional damage to pipelines is already covered in sections 60123(b) and (c). Section 60123(d) should be modified to require only knowing and willful failure to call the available one-call system.

The Administration bill would amend the penalty provisions of Sec. 60123, the section dealing with damage to underground facilities, to provide that any person engaged in excavation activity without having called a one-call system is guilty of a misdemeanor. While we want to promote the use of one-call systems whenever possible, we believe this provision is excessive. The provision does not define "excavation activity" so conceivably activities as normal as gardening could be covered. This provision should either be dropped or modified to clarify what type of excavation activities are covered.

On a matter not covered in the bills, we have seen an increased tendency for accident investigations to be delayed because prosecutors want to investigate the possibility of criminal indictments. Frankly, we worry about the trend to criminalize accidents, but the bigger problem is that accident investigations by the NTSB are being delayed. Both OPS and the industry want to know the cause of accidents as soon as possible, in order to apply the lessons learned and reduce the chances of possible future incidents. We are not sure if a solution to this growing problem can be incorporated in this legislation, but it is a problem we urge the Committee to address.

Innovative Technology Development

Both the McCain bill and the Administration's bill propose increased research into the development of alternative technologies. We support improved research in the listed areas. Traditionally, technological innovation and improved safety inspection devices have been supported and funded by

the industry. We welcome DOT's involvement in this important area. We support the Administration's proposal which authorizes the Secretary to support technological development through cooperative agreements with trade associations, academic institutions or other qualified organizations.

Authorization of Appropriations

We certainly appreciate that OPS is engaged in a number of new initiatives that require adequate funding. On the other hand, the majority of the OPS budget is funded through user fees paid by the pipeline industry. The budget must be sufficient but should not be increased beyond what the agency is capable of spending productively. The amounts proposed in S. 2004 go far beyond the needs of the OPS and would result in a roughly 150% increase in pipeline user fees. A level of funding closer to that proposed in the McCain bill appears to be warranted. We also support drawing funds from the Oil Spill Liability Trust Fund for work undertaken by OPS that falls within the scope of that Fund.

Summary

In summary, AOPL and API members have built a solid safety record, but we also recognize that society expects and demands that we do better. We expect no less of ourselves. We look forward to working with OPS on the pipeline integrity rulemaking as the next important step in that effort. Achieving safety is the result of a system-wide effort that focuses resources where they are needed. We believe OPS is on the right track and that important progress has been made since this Committee passed the last authorization bill in 1996. We pledge to work with this Committee to pass an equally successful bill in this Congress.